Summary of Questions/Comments and Responses

Public Meeting on Notice of Intended Regulatory Action (NOIRA):
"Technology-Based, Numerical Nutrient Limits for Certain Permitted Discharges in Virginia's Chesapeake Bay Watershed"
February 26, 2004

Question/Comment	Response
1. If it were decided to put load allocations into water quality management plans, would that be a subsequent rulemaking?	No, that option is already identified as a potential secondary action within this NOIRA.
2. Everyone recognizes the importance of growth and there will be load caps. Therefore, we should look at updated, future flow projections when they become available for the affected plants.	Accommodating future growth is one of the issues raised in the NOIRA. We are all going to be living under these caps, and it remains to be seen how this will be accomplished.
3. What's the reason for raising the issue of "Farm & Forest impacts" in the NOIRA?	Aside from being a required element of the Administrative Processes Act (APA), in this case load caps for point sources could potentially result in more homes using onsite (septic) treatment systems.
4. What is the time line for this point source regulation development? If there is a concern about how this interacts with the Bay water quality standards APA process, let's try to shorten the timeline for the point source rulemaking.	An expedited APA process can run from 18-24 months, but could possibly be shorter. The Sec. of Natural Resources desires to have these two rulemakings coincide without short-changing the public process, and have both completed before the current administration leaves office.
5. The current Point Source Policy for Nutrient Enriched Waters only applies to certain plants east of the fall line. How will the revised regulation affect other facilities located in the non-tidal sections of a tributary to the Bay?	This is a watershed approach, and is intended to address plants throughout the Bay tributaries, not just waters defined in the standards as "nutrient enriched". There is also a separate, future rulemaking scheduled to draft nutrient water quality standards applicable to the freshwater, free flowing areas of the State.
6. The NOIRA listed about 5 points under "why" this action is being taken. It still doesn't answer why we need additional amounts of reduction from point sources, while nonpoint sources still have a long way to go in this effort and contribute the majority of the nutrient loads.	Point Sources are regulated and Virginia's approach is moving from a voluntary program to that of regulatory. Additionally, not all NPS loads are "controllable", while the technology exists for controlling point source loads. However, there are boundaries and we don't want to be extreme; need to recognize both the issues of growth and cost-effectiveness.
7. Would the WQIF Act be amended because it currently voluntary? Yet, nutrient reductions would no longer be voluntary once included in a permit.	Funding might be prioritized for plants going beyond permit requirements. The language pertaining to "voluntary" measures, above and beyond permit requirements, is only in the WQIF Grant Guidance -- not the act itself.

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8. Regarding the integrated watershed approach, if we conduct this rulemaking so that it facilitates trading, there would be an environmental benefit and potentially significant cost savings. Rulemaking shouldn't just promote technology-based retrofits at all facilities.	Setting the permit load (not concentration) may facilitate the watershed approach. Within the next 2 or 3 months, guidance from EPA on watershed permits may be forthcoming. The Bay Program's Permitting Workgroup is evaluating several options that could help in this regard, such as annual limits rather than monthly, and "bubble" permits that cover several plants.
9. Is contingency on cost-share availability allowed under the Clean Water Act?	The NOIRA issue isn't a statement of intent; it's just one option to consider. The state's commitment would be to make available state or other funds, but not necessarily make compliance contingent on receipt of a grant.
10. Given findings by USGS on groundwater lag times, the timeline for developing this regulation, and attaining water quality standards by 2010 -- what is the state's reaction to VAMWA's proposal for a 10-year compliance schedule and two rounds of VPDES permit reissuances?	The affects of groundwater lag times (takes several years for existing nutrient-rich groundwater to flush out of the system) are recognized. When the tributary load allocations were agreed to, this was acknowledged in the Bay Program's adoption statement. Shouldn't affect our efforts to get the nonpoint source controls on the land. The outcome might be that we'll attempt to clean up the Bay under the "C2K" Agreement, and complete the effort under a TMDL.
11. Saw a technical presentation at a Chesapeake Bay Commission meeting, with the conclusion that water quality improvements will be realized very quickly if the controls are installed.	Comment acknowledged.
12. Several owners are now considering more stringent nutrient treatment with plant expansions. Trying to move forward at all plants simultaneously isn't necessarily good public policy because of the unintended affect of driving up construction bid prices, due to the limited number of contractors and skilled labor available.	Comment acknowledged.
13. State should spread the construction timeline out, and consider making incentive provisions for the "early starters".	Comment acknowledged.
14. Need further explanation of the secondary action under this rulemaking, to possibly revise the Water Quality Management Regulation.	Tributary Strategy process isn't regulatory, so the proposed nutrient concentrations and load allocations in those plans aren't enforceable. The technology based limits regulation needs to be supported by an enforceable policy governing the load

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	allowances, and that's where the WQM Regulation can play a role.
15. Draft tributary strategies to be completed in 2 months; should we expect the point source controls in those plans to be the recommended load allocations in the water quality management regulation?	The tributary strategies will serve as a useful guide in separating the point and nonpoint source portions of the total basin nutrient allocations. It's important to note that the tributary strategies are intended to set a total, basinwide point source allocation for each basin, not the individual plant allowances. The regulation being developed under this rulemaking is the process that will set the authorization and framework for establishing the individual plant loads and permit decisions.
16. The Tributary Strategy goals used figures that have already resulted from control actions at point sources. This permit regulation can't rely on the Strategy numbers to set limits because you must operate below the limit to ensure compliance.	That is why we're considering longer-term compliance periods (perhaps annual limits), and EPA seems amenable to this option.
17. The SWCB has deregulated the WQM Plans -- how does this affect the NOIRA's secondary action?	We still have a regulation governing the WQM Planning process and requirement to have individual basin plans. It's the existing basin plans themselves that are being converted into non-regulatory documents.
18. Any thoughts about how/if the northern Virginia localities that send flow to DC-Blue Plains STP will be governed under this regulation?	Those localities are responsible for the loads, either treated at Blue Plains or their own plants. DC Water & Sewer Authority is willing to meet the needs of their customers. Indications are that reasonable minds will work out an agreement that aids all the contributing localities, but the details and an equitable way to distribute costs must still be decided.
19. When NC permitted the Charlotte-Mecklenburg discharge, SC had to sue NC to assure NC standards were met. Do we anticipate other jurisdictions will meet their allocations? How will this regulation work to achieve all the other Bay states' water quality standards?	The allocations we're seeking to meet in the Bay Program already consider attainment of the other states' standards. If another State changes its water quality standards and the resulting allocation changes, then Virginia may have to also alter what is required in terms of point source controls.